CONTENTS

GOOD HEALTH AND PROSPERITY

Much has happened in Spain since our last newsletter, particularly in relation to taxes, prevention of money laundering, employment legislation and other matters. In this newsletter we bring you up to date with all these issues as well as other topics which you might find of interest.

On the political front, Spain's right wing government, which won the last general elections held in November 2011, with an overwhelming majority, is struggling to achieve their promised turn around. Time will tell.

We wish our readers good health and prosperity for the coming year, and remember that we are always here to help on matters relating to taxation, accounting, audit, payroll and HR, data protection and prevention of money laundering.

Best wishes.

Juan Carlos Ronco Corsi.

Managing partner.

TAX FRAUD

New penalties have recently been announced as part of the Spanish Government's drive to stamp out tax evasion.

New fines have been introduced for obstructing tax investigations when the tax payer in question is under inspection.

Such fines oscillate between 1,000 and 100,000 Euros for persons who do not carry out business or professional activities, and between 3,000 and 600,000 Euros for those that do.

OTHER TAX PROPOSALS ON THE DRAWING BOARD

As mentioned in the introduction to this general newsletter, the government continues to make regular return visits to the tax drawing board.

Here are some indications of potential new legislation:

1. Disclosure of gains obtained abroad on quoted and unquoted investments.
2. Real estate investments overseas, including those made through holding companies.
3. Assets and investments held outside Spain but not declared will not be statute barred for tax purposes.

SEPA

(SINGLE EURO PAYMENTS AREA)

In March last year the above payment system came into force throughout the EU.
The objective of this scheme is to set up a financial infrastructure which will be able to consolidate, centralize and standardize all payment and receipt systems, for banks and other types of financial institutions.
This system will become mandatory as from February 2014, and will operate via one of two channels; CORE, the basic scheme, or B2B, the scheme designed for business users.
SEPA will make life much easier for cross border financial transactions, and drastically reduce the payment time.

FATCA

(FOREIGN ACCOUNT TAX COMPLIANCE ACT)

Spain and the USA recently signed an updated version of the double tax treaty between the two countries, a measure which is designed to reinforce the relationship between the two countries. The USA expects to sign similar agreements with other countries in the near future.
Commonly known as FATCA, this measure follows the steps taken last summer by UK, Germany, Italy, France, USA and Spain. In accordance with this new piece of legislation, financial institutions in both countries will be required to inform the tax authorities of their respective co-signatories, of financial transactions between tax payers of all these countries.
The Isle Of Man is also working with the UK on these issues.

PAYROLL PROCEDURES IN SPAIN

For organizations considering expanding their operations into Europe, Spain is a great staring point. In addition to a highly qualified workforce, the nation's strategic location makes it a gateway to accessing the growing markets throughout Europe and North Africa. Moreover, the country's cultural ties to Latin America make it a launching ground for business with that region as well.

What makes establishing operations in Spain even more compelling is that the Spanish government offers various incentives for developing businesses and provides an inviting environment for foreign investment.

Employment Contracts: Employment contracts in Spain are determined by the duration of each worker's employment. As a result, contracts can be either permanent or temporary, and full time or part time, according to the hours determined in the collective agreement.

Contract Registration: For each employee the organization hires, the company must register the employment contract with the social security authorities and Spain's national employment service. New contracts must be registered before the start of employment, and contract changes or terminations must be registered within six days.

Probationary Period: Newly enacted legislation for 2012 greatly extended the probationary period of employment from 15 days to one year. During this time, both the employer or employee can terminate employment without prior notice, and the employer is not required to pay severance.

Overtime compensation: Employees are permitted to work a maximum of 80 hours of overtime per year, with exceptions for urgent or extraordinary situations. Overtime is taxable and subjected to specific social security tax percentages.

Severance: According labour legislation, employers are required to provide dismissed permanent employees with 33 day's worth of salary for every year worked, with temporary employees receiving a severance of eight days of salary per each year they worked.

While these are the most crucial parts of Spain's labour legislations, there is another set of rules governing payments and deductions for employees. While these rules are complex and vary from between regions, they are designed to protect one of the country's most valuable resources: its workforce.
Before hiring workers in Spain, make sure you are familiar with the following rules for compensating employees appropriately.

Number of Payments: Employers in Spain must pay their workers in 12 monthly payments, though many collective agreements require two additional payments in July and December that are sometimes pro-rated and included in monthly payrolls through social security contributions.

Sick Leave: Compensation for sick leave depends on the length of the absence; there is no pay for three or fewer sick days, but the employer must pay 60 percent of the salary for each day between four and 15 days. For sick leave longer than that, or for injuries that occur on the job, Spain's National Institute of Social Security takes over the payments.

Personal Income Tax: Employers are responsible for deducting personal income tax from their employees' pay checks, with the amount based on both national and regional rules that account for gross amount, disability degree, place of residence, and number of children. Taxes must be filed by the 20th of each month and by January 31 for the annual filing.

Social Security Tax Rates: Employees are expected to pay a social security tax rate between 4.8 percent and 6.4 percent of their salaries, while employers must pay a social security tax rate of 29.9 percent for each employee.

Social Security Contributions: Social Security contributions are determined by the sum of the amount of the monthly payments that are taxable. For 2013, the contribution ranges from 753€ to 3.425,70€ depending on each employee´s professional group or contribution group.

Finally, in conclusion…

Establishing operations in a new country is never easy and hiring and compensating employees who speak another language and have a different culture is often the biggest challenge. Due to Spain's complicated and often-changing labour regulations, it can be particularly difficult for employers to understand the country's policies and accurately reflect them on their employees' pay checks.

As there are serious repercussions for employers who fail to adhere to the above rules and procedures, companies simply can't afford to risk non-compliance. Instead, they can benefit from working with a partner experienced in all the nuances of Spanish payroll. A company specializing in international payroll can handle the complexities involved with compensating employees in Spain, allowing the organization to devote more time and resources to more strategic business operations.

The ASEC payroll team is a highly skilled group with wide experience in international and national payrolls. It also provides support on other related matters in the HR sector.

ECOFIN
POLICY STATEMENT ON OFFSHORE JURISDICTIONS

ECOFIN, the group of finance ministers of the EU countries, recently made a policy statement with regard to the harmful effects of the offshore tax regime, in particular the Gibraltar one, in relation to income taxes.
In 2008 the European court of justice ruled in favor of Gibraltar, against a resolution of the European Commission, thereby recognizing their right to raise local taxes.

However on the 15 November 2011, the European Court of Justice, overturned this ruling, arguing that the legislation enacted in 2002 by the Gibraltar authorities, gave unfair advantages to companies who really did not have a real local presence, and who were not subjected to paying taxes in that jurisdiction.

YET MORE TAX CHANGES

The readers of this bulletin might well be forgiven for the abundance of tax issues included. Well contrary to what many readers may think, this is not our doing!

As mentioned in our intro, the new Spanish government made it clear in December 2011, shortly after taking office, that they proposed substantial changes, and that it would take a considerable amount of time to get these on the statute book.

The new legislation makes the following changes:

1. Joint responsibility for directors of operating companies where taxes are filed but the amounts due are not paid.
2. The winding up of companies were taxes remain unpaid may give rise to personal responsibility of the shareholders.
3. The use of company owned homes by the shareholders after liquidation will be prohibited whilst tax debts remain unpaid.
4. It is the responsibility of all tax payers to cooperate with the tax inspectors, where a review or investigation is being carried out. Failure to do so will give rise to substantial fines and penalties.
5. The tax authorities can also embargo assets to ensure that any taxes due or potential due are covered.

MONEY LAUNDERING, KEY FACTORS FOR ITS PREVENTION

The last 10/15 years have had a substantial change on the Spanish economy. One of the main contributors being the huge influx of foreign workers, particularly from South America. Its currently estimated that the number of these Latin immigrants is around 500.000. This phenomenon is not limited to Spain, a substantial number of other EU members have experienced the same.

One of the main effects of this influx is the setting of exchange bureaus which are widely used by immigrants to send money back home.

The effect of this phenomenon is the high risk it creates as it introduces large amounts of cash into the circuit, which cannot be traced.

The subsequent movement of these funds through the international circuit is largely done through intermediaries, thus removing the identity of the persons involved, something that the international drug world has picked on and used for its benefit.

The fiscal authorities of the western world have therefore introduced measures to ensure that maximum identification of the parties involved in exchange transactions are produced and documented.

Spain has followed through with strong measures to limit the use of cash for making payments up to 2,500 Euros.

The ASEC group has maintained a strong KYC (Know your client) policy in place before it accepts new clients, and follows this up with regular reviews.

THE VAT INFORMATION EXCHANGE SYSTEM

What is the VAT Information Exchange System (VIES)?
It is an electronic means of transmitting information relating to VAT-Registration (=validity of VAT numbers) of companies registered in EU. Furthermore, information relating to (tax exempt) intra-Community supplies between Member States' administration is also transmitted via VIES.

How is this information obtained?
The information relating to VAT-registration data is captured by the national administrations and fed into national databases. This applies also to the intra-Community supplies declared on "recapitulative statements".

How up-to-date is the data?
The data is real-time. Each time you make a request, a message is sent to the Member State which issued the VAT identification number asking if the number quoted is valid.

Can I make batch requests via VIES on the Web?
No. The system is designed for single requests.

Will further information be made available?
No. Only confirmation on whether or not a number is valid.

The system indicates that a number is invalid. What action should I take?
A number can be invalid for a number of reasons. In the first case, check with your customer that the number quoted by him is correct (correct number of characters, correct length). If the number quoted by your customer, even after checking, continues to be invalid, you should ask him to contact his tax administration.

TAX FRAUD AND OTHER ISSUES

Gaona Abogados, Malaga.

On the 28th December last, the Spanish government published changes to the Penal Code, aimed at creating greater transparency in the detection of tax and Social Security fraud.

The major change brought about by this legislation is that this type of criminal action will not paralyze action for the recovery of unpaid taxes or other types of contribution to the exchequer. This will also bring about automatic communications from the tax authorities to the prosecutor general's office. Thereby making prosecution much faster.

CORPORATE DEFENSE

In accordance with the changes introduced to the penal code, companies will find themselves facing substantial criminal responsibilities, previously not attributable to legal entities such as limited companies.

What does this new responsibility mean for such entities?

For profit Legal entities until now worked under the premise that only individuals could be held accountable under criminal considerations.

With the lifting of the veil by this new law, managers, directors, and in some cases the shareholders, may/will be held accountable for the wrongdoings of the companies they are involved in. This accountability is extended to managers and other authorized employees of the entity in question.

This major change to company law makes it extremely important for all directors and managers to take proper legal advice when entering into contractual arrangements on behalf of their businesses.

ASSETS SITUATED OUTSIDE SPAIN AND THE OBLIGATION OF HAVING TO REPORT THEM

A new law to fight against tax fraud came into force on 31st October 2.012. This law was processed urgently as a way of encouraging the tax amnesty in its final stretch.

Although the amnesty has raised only 1,200 million Euros, the whole process has brought about new tools to enable the government to uncover assets, undeclared bank accounts and hidden capital that will start to be taxed on and thus make a contribution to the national budget.

This amnesty has brought about the feasibility of regularizing undeclared assets, and at a very low levy of 10%.

Those taxpayers who have taken the advantage of the fiscal amnesty, have also been obliged to make complementary tax returns for those taxes which were not under the amnesty procedure such as: inheritance tax, wealth tax, VAT etc.

This new law designed to fight against tax fraud, contemplates a new obligation for Spanish tax residents who will have to inform the authorities of their assets situated abroad.

Spanish Tax residents will have to declare these assets if they are owners, duly empowered representatives, authorised signatories, or ultimate beneficiaries as indicated in the Spanish Prevention of Money Laundering Law (10/2010 of 28th April).

Furthermore, this new law also mentions "trusts" or other analogous legal figures in relation to the obligation of reporting. We highly recommend that Spanish tax residents, who may have any type of connection with trusts or other analogous legal figures, that hold assets abroad, seek personal advice in order to clarify whether the relevant informative declaration should be submitted.

The foreign assets to be reported not only refer to bank deposits but also comprise others such as shares, bonds, properties, life insurances, annuities, pension schemes etc

This informative declaration must be provided to the Spanish Tax Office, within the first quarter of 2.013, detailing all the assets situated abroad at 31st of December 2.012 as from 50.000€. This amount will have to be calculated in accordance with a classification of each type of asset. For subsequent years, the declaration will have to be submitted, only if the figure of 20.000€, per each type of asset, is exceeded. Spanish resident taxpayers who are obliged to file this declaration and do not comply with this obligation will be penalized with a minimum fine of 10.000€, that will be increased by 5.000€ for each type of information not provided. Furthermore, these undeclared assets, together with their undeclared related accumulated earnings, will be subject to the top income tax rate, moreover 150% penalty will be calculated on the mentioned tax payment brought to light. On the other hand, if the informative declaration is submitted but out of time, a minimum fine of 1.500€ will be imposed, which can be increased in 100€ per each piece of information not given.
It is important to bear in mind that there is no time limit for the Spanish Tax office to open a Tax Investigation and request the tax and penalty payments in relation to assets situated outside Spain. These tax obligations are not statute barred.

This measure could also affect Spanish companies with assets outside Spain, which will have to comply with the above mentioned requirements.

This strategic fight against tax fraud has the aim of putting an end to the tax regularization processes which have been used so often in the past.

A requirement also exists for these tax payers to make regular declarations to the Bank of Spain, in relation to such investments. In addition they must be declared in their annual wealth tax returns (for individuals), and any income or gain derived there from, equally disclosed for income tax purposes.

The opening and or closing of the above types of bank accounts must also be reported to the Bank of Spain within a month.

Details of the movements in these accounts must equally be reported annually.

All the above mentioned disclosures have to be made via Internet.

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